

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1941 of 1983

Date of decision: 09-08-96

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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KASINDRA GRAM PANCHAYAT

Versus

UNION OF INDIA  
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Appearance:

MS VASUBEN P SHAH for Petitioner  
MR KETAN A DAVE for Respondent No. 1  
MR JD AJMERA for Respondent No. 2  
MR HM BHAGAT for Respondent No. 3  
Mr. Nigam Shukla for Respondent No. 4  
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/08/96

ORAL JUDGEMENT

Heard the learned counsel for the parties.

Mr. J.D.Ajmera, learned counsel for respondent No.2, has raised a preliminary objection that this special civil application is not maintainable. To appreciate the contentions raised in the petition the facts, in brief, may be stated as under:

For availing the facility of public call office at village Kasindra the petitioner applied to the Department. The petitioner's application was accepted and the Department had decided to install public call office at Kasindra. The Department directed the petitioner to execute an indemnity bond agreeing to indemnify the Government against loss which may result from the installation and opening of public call office (P.C.O) and maintenance thereof at the said place. Because of its failure to recover sufficient amount necessary for maintenance of public call office undisputedly the petitioner failed to pay the outstanding dues of the respondents in respect of the aforesaid P.C.O. and as such the petitioner incurred liability to indemnify the respondents. When the demand was made from the petitioner this special civil application has been filed. This Court has protected the petitioner by granting interim relief on condition of making payment of 50% of the amount demanded.

2. The counsel for the respondents contended that it is a matter of contractual obligations and as such this petition is not maintainable. Under the indemnity bond the petitioner has to make payment to the respondents in case of deficit and as such there is nothing to state that any legal or fundamental right of the petitioner has been infringed. Whatever demand has been raised arises from the indemnity bond and as such no writ lies before this Court. The counsel for the petitioner on the other hand contended that this writ petition is maintainable. She admits that it is a case of indemnity bond, but, according to her, the demand which has been made is arbitrary.

3. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. The petitioner cannot get out of the indemnity bond which it has executed in favour of the respondents. When the P.C.O. has been installed subject to the condition of indemnifying the amount of deficit, I fail to see how it can be said to be a case of infringement of any legal or fundamental right of the petitioner. It is a matter which arises certainly out of some contractual obligations for which the proper remedy would have been

elsewhere and not by way of this special civil application under Article 226 of the Constitution of India.

4. Learned counsel for the respondents submitted that stay has not been granted by the court against the demand to the extent of 100% and by now the amount would have been realised. I do not consider it proper to go into this question as I do not consider it a case where the petitioner is said to be justified in approaching this court by way of writ petition under Article 226 of the Constitution of India.

5. In the result the writ petition fails and the same is dismissed. Rule discharged. No order as to costs.

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